No. 80-1521

Office-Supreme Court, U
FILED
FEB 27 1981
ALEXANDER L. STEVA
CLERK

In The

Supreme Court of the United States

October Term, 1980

BERTRAM IRA GREENBERG, a/k/a ROBERT GREENBERG, a/k/a BOB GREENBERG,

Petitioner,

vs.

SAN JUAN HOTEL CORP.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

LEONARD M. SIMON, P.C.
Attorney for Petitioner
90 Broad Street
New York, New York 10004
(212) 344-8790

3888 LUTZ APPELLATE PRINTERS, INC.
NY (212) 840-9494 • (516) 222-1606 • (914) 683-9363
NJ (201) 257-6850 • PA (215) 563-5587 • DC (202) 783-7288 • MA (617) 227-1133

QUESTIONS PRESENTED

1. Whether the forum in which enforcement of a foreign judgment is sought must weigh due process considerations as a prerequisite for affording the aforesaid judgment full faith and credit, where the party against whom enforcement is sought raises that substantial constitutional issue?

2. Whether a judgment rendered by the Superior Court of Puerto Rico against a citizen of New York which was fraudulently secured is entitled to full faith and credit?

3. Whether the Puerto Rican tribunal had *in personam* jurisdiction over the petitioner sufficient to afford its judgment full faith and credit?

PARTIES

The parties to this action were the same in the courts below.

TABLE OF CONTENTS

Page

Questions Presented i

Parties i

Table of Contents ii

Table of Citations iii

Opinions Below 1

Jurisdictional Statement 2

Statutes Involved 2

Statement of the Case 2

Reasons for Granting the Writ:

I. The District Court and Court of Appeals erred in failing to consider petitioner's allegations of due process violations before affording a foreign judgment full faith and credit. 6

Introduction 6

Significance of the Case at Bar 9

II. The judgment rendered by the Court of Puerto Rico is not entitled to full faith and credit as the rendering court lacked *in personam* jurisdiction over the petitioner. 14

Contents

Page

Conclusion 18

TABLE OF CITATIONS

Cases Cited:

Erdman v. Stevens, 458 F. 2d (2d Cir. 1972) 12

International Shoe Co. v. Washington, 326 U.S. 310 (1945). 15

Jackson v. Virginia, 443 U.S. 307, 61 L. Ed. 2d 560, 99 S. Ct. 2781 13

Nevada Tax Comm. v. Hicks, 73 Nev. 115 17

North Carolina v. Pearce, 395 U.S. 711 (1969) 8

Pembleton v. Illinois Commercial Men's Assoc., 124 N.E. 355, cert. dism'd, 253 U.S. 499 15

Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952). 15

San Juan Hotel Corporation v. Lefkowitz, 277 F. Supp. 28 (D.C. P.R. 1967) 4, 15, 17

Terrace v. Thompson, 263 U.S. 197, 44 S. Ct. 15, 68 L. Ed. 255 12

West Indies v. First National Bank of Nevada, 67 Nev. 13.. 17

Younger v. Harris, 401 U.S. 37 13

Contents

Page

Statutes Cited:

28 U.S.C. §1254 2

42 U.S.C. §1983 ..... 2, 12

Puerto Rican Civil Code, §4774, p. 547 11

United States Constitution Cited:

Article IV, §1 2

Fourteenth Amendment 8, 13

Rules Cited:

Puerto Rican Rules of Civil Procedure:

Rule 4.7(a) 2, 14, 16

Rule 4.7(a)1 14

Rule 56 4

APPENDIX

Original Complaint 1a

Amended Complaint 3a

Decision of the Superior Court of Puerto Rico 5a

Contents

Page

Opinion of Hon. Henry A. Bramwell, District Judge 18a

Opinion of the Court of Appeals for the Second Circuit .. 25a

No.

In The

Supreme Court of the United States

October Term, 1980

BERTRAM IRA GREENBERG, a/k/a BOB GREENBERG, a/k/a ROBERT GREENBERG,

Petitioner,

vs.

SAN JUAN HOTEL CORP.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OPINIONS BELOW

The opinion in this action of the United States Court of Appeals for the Second Circuit, dated December 1, 1980, entitled *San Juan Hotel Corporation v. Bertram Ira Greenberg* is unreported.

The opinion of the United States District Court for the Eastern District of New York is unreported.

JURISDICTIONAL STATEMENT

The judgment sought to be reviewed is dated December 1, 1980 and was entered on December 1, 1980.

By order dated January 23, 1981, the United States Court of Appeals for the Second Circuit denied petitioner's petition for rehearing.

This Court has jurisidiction to review the judgment in question by a writ of certiorari pursuant to the provisions of 28 U.S.C. §1254.

STATUTES INVOLVED

The case involves the interpretation and construction of the Puerto Rican long-arm statute, Rule 4.7(a) of the Puerto Rican Rules of Civil Procedure; 42 U.S.C. §1983 and Article IV, §1 U.S. Const.

STATEMENT OF THE CASE

Jurisdiction was vested in the United States District Court for the Eastern District of New York under and pursuant to the Constitution of the United States, Article IV, §1 and the respondent alleged that the controversy exceeded exclusive of interest and cost, the sum of $10,000.

The respondent, in June 1972 served the petitioner with a summons returnable in the Civil Court of the City of New York, County of Kings, seeking collection on a debt based upon a default judgment entered against petitioner in the Superior Court of Puerto Rico on or about June 28, 1971. In respondent's original complaint, dated March 29, 1971, the respondent averred that it had in its possession written evidence of the

petitioner's indebtedness, which evidentiary documentation also contained a consent to jurisdiction of the courts of Puerto Rico. The petitioner immediately challenged the jurisdictional basis of the Puerto Rican judgment and the New York State Appellate Division, Second Department, found jurisdiction over the petitioner to be lacking. The highest court of the State of New York, the Court of Appeals, denied the respondent's leave to appeal.

Subsequently, an amended complaint dated November 4, 1975, was served on the petitioner. This complaint set forth a different date on which the petitioner's indebtedness was allegedly incurred. It also based its claim of indebtedness on certain dishonored checks rather than the written evidence of indebtedness set forth, described, and relied upon in the earlier complaint.

The respondent next moved the courts of Puerto Rico for an order authorizing the service of a supplemental process upon the petitioner by service upon the petitioner's legal counsel. By order dated November 11, 1975, supplementary service of process upon counsel for the petitioner was authorized and made.

The petitioner unsuccessfully contested the jurisdiction of the court by motion and a trial thereafter ensued. At the conclusion of the trial, the judgment herein sought to be enforced was entered against the petitioner.

Petitioner thereafter commenced suit in the United States District Court for the Eastern District of New York under docket number 79 Civ. 941 (H.A.B.) against the respondent herein, which process set forth the flagrant and unlawful conduct engaged in by the respondent pursuant to its intentional exercise of extra-judicial means in attempting to collect on the originally jurisdictionally defective judgment.

As a counterclaim to that suit, the respondent asserted the same judgment sought to be enforced herein and made a motion for summary judgment thereon pursuant to Rule 56 of the Federal Rules of Civil Procedure. On October 12, 1979, the respondent's motion for summary judgment was denied by the Hon. Henry A. Bramwell.

Thereafter, without severing its counterclaim, the respondent commenced a new action seeking the identical relief sought in the counterclaim interposed in 79 Civ. 941 (H.A.B.). By this action, the respondent sought to enforce the judgment entered against the petitioner in the Superior Court of Puerto Rico.

After a motion by the petitioner to dismiss the complaint herein was made, the respondent cross-moved for summary judgment. The instant case, as well as 79 Civ. 941 (H.A.B.) were both before the Hon. Henry A. Bramwell.

On June 6, 1980, the respondent's motion for summary judgment was granted by Judge Bramwell despite the court's denial of the same relief in the identical action. The court found that the judgment of the Superior Court of Puerto Rico was jurisdictionally proper under the holding of *San Juan Hotel Corporation v. Lefkowitz,* 277 F. Supp. 28 (D.C. P.R. 1967). By order dated June 18, 1980, Judge Bramwell directed the entry of judgment against the appellant in the sum of $14,563.67 with interest and cost. It is from this order that the petitioner petitions this Court for a writ of certiorari.

Despite the amount of money involved herein, the instant action raises serious and substantial questions of constitutional due process which merit the granting of the instant petition for certiorari. This is not a case where a debtor is trying to take technical advantage of a complicated conflict of law situation in

order to withstand having to meet an obligation which he otherwise would owe. The petitioner from the inception of this matter has steadfastly maintained that in early 1970 he completely satisfied the said obligation to the respondent. He has consistently challenged the respondent to present any evidence of indebtedness and the respondent has never had to produce such documentation.

As set forth in the argument portion of this petition, the petition at bar sets forth serious and substantial due process violations, which, it is respectfully submitted, mandate that this Court take jurisdiction over the case in order that such conduct not go without judicial scrutiny. It is respectfully submitted that the issues raised herein are of such importance as to justify the granting of a writ of certiorari.

Accordingly, in this petition, we seek a writ of certiorari, seeking a review of the decision of the Court of Appeals which completely overlooked and failed to address any of the due process considerations properly raised by the petitioner herein. The questions presented by this petition are fully addressed in the following points.

REASONS FOR GRANTING THE WRIT

I.

THE DISTRICT COURT AND COURT OF APPEALS ERRED IN FAILING TO CONSIDER PETITIONER'S ALLEGATIONS OF DUE PROCESS VIOLATIONS BEFORE AFFORDING A FOREIGN JUDGMENT FULL FAITH AND CREDIT.

Introduction

The judgment rendered by the Superior Court of Puerto Rico is not entitled to full faith and credit as it was fraudulently obtained by the respondent. As a product of fraud, the Puerto Rican judgment is a nullity and the enforcement powers of our courts should not be exercised in order to support and validate so defective an instrument.

The facts supporting the aforementioned contention are so overwhelming and persuasive that they cannot be disregarded by this Court. For instance, the original complaint brought by the respondent in the Superior Court of Puerto Rico alleged that the petitioner had executed certain markers which contained a provision wherein the petitioner agreed to submit to the jurisdiction of the Puerto Rican tribunal. However, the second complaint served by the respondent deliberately excluded mention of any marker since the respondent knew that it was unable to produce the same. This glaring disparity can only be reconciled by recognizing that the respondent was so committed to securing judgment against the petitioner that it knowingly engaged in misrepresentative conduct in order to achieve this end. The additional significance of the foregoing is that not only was the respondent unable to produce the markers, the sole indicia of the alleged continued indebtedness, but it further

served to establish the fact that the peitioner never consented to the jurisdiction of the Puerto Rican courts, as the respondent had argued. Needless to say, the failure of the respondent to produce the markers substantiates the petitioner's contention that he fully satisfied the debt since no creditor would part with the markers unless the underlying debt were satisfied.

The mislaid reliance upon the existence of markers alleged in the first complaint and its subsequent omission in the second complaint serves to underscore the flagrant misconduct engaged in by the respondent and especially suggests the length to which it would travel in order to defraud the petitioner.

The glaring inconsistency with respect to the production of the markers was never explained by the respondent. Instead, it asserted that the debt was evidenced by a check and of necessity abandoned the marker theory altogether. Such misconduct cannot be condoned and full faith and credit was never intended to be employed as a shield whereby the fraud underlying the securing of the judgment could be overlooked. However, the respondent successfully argued below that the District Court's inquiry should preclude any consideration of whether the Puerto Rican judgment was a product of fraud. This argument apparently was accepted by the Second Circuit. Such a limited inquiry was improper and denied the petitioner a full and fair opportunity to establish his case.

Furthermore, a review of the original and amended complaint served by the respondent reflects the patent fraud complained of herein, which emanates from the respondent's course of conduct. The respondent's original complaint alleges that the debt was incurred in November 1969, whereas the amended complaint alleged that it was incurred in April 1970. This patent and devastating inconsistency on the face of its own

complaint is never explained or reconciled by the respondent. This omission serves as a further testimony to the rampant misconduct engaged in by the respondent.

The disparity between the dates coupled with the failure to produce the markers or a "returned" check despite recitation of their existence in the compliance, reflects a fraud that cannot be waived. The Puerto Rican judgment should be deemed an absolute nullity on its face.

Furthermore, it is clear from both the language and tone of the judgment sought to be enforced that the Superior Court of Puerto Rico did not give the petitioner a full, fair and impartial hearing in the underlying lawsuit and was actually biased against him. In flagrant violation of the petitioner's Fourteenth Amendment rights, the Superior Court imposed burdensome penalties upon him for the explicit purpose of punishing him for his having succeeded in getting his earlier suit dismissed for lack of jurisdiction. Were it not for these unprecedented penalties, the amount in controversy would have failed to reach the necessary $10,000 jurisdictional predicate relied upon here for jurisdiction. The sole purpose of the Superior Court in levying gross and disproportionate penalties and costs upon the petitioner was to penalize him for choosing to exercise his constitutional rights in getting the earlier action dismissed. *North Carolina v. Pearce,* 395 U.S. 711 (1969).

As was stated by the Superior Court of Puerto Rico, on the face of its judgment:

> "The petitioner having proceeded with extreme obstinacy, prolonging this case for more than seven years, the Court is under the obligation to in the just application of the law impose him (sic) the payment of attorney's fees commensurate

with his acts and to payment of interest from the date in which the cause of action appeared, April 1, 1970."

In accusing the petitioner of obstinately prolonging the case for more than seven years and awarding interest dating back to 1970, the court, in violation of the petitioner's due process rights, put a price on his having successfully pursued the earlier case through the New York courts. A judicial act of vindictiveness against a litigant for having exercised his right of access and appeal to the courts, such as occurred here, is not entitled to full faith and credit. As the defect here is apparent on the face of the judgment, full faith and credit should not be accorded to it as the instrument offends due process.

Significance of the Case at Bar

The foregoing sets forth the catalogue of abuses giving rise to the alarming due process violations overlooked by the courts below.

For ten years the petitioner has steadfastly stood by the fact that he has paid the debt in question. This debt has now grown to a sum of approximately $17,000, which includes a penalty for obstinacy and interest caused by the delay of the petitioner. When a United States citizen cannot get a fair hearing concerning a debt which he has already paid, and is harassed for a ten-year period, the issue goes to the very root of our judicial system. It is clear from the facts presented that the petitioner never received a fair hearing. The circumstances set forth herein substantiate this position:

(a) In 1971, the respondent improperly commenced an action against the petitioner that resulted in a judgment in Puerto Rico. The New York courts found that the petitioner

sustained the burden of proof in establishing that he was never served with a summons and complaint in the Puerto Rican action. The Appellate Division had this matter twice and found in favor of the petitioner. The New York State Court of Appeals refused to hear the issue.

(b) The summons and complaint issued in Puerto Rico in 1971 contained an allegation that the respondent was holding "markers" which are the equivalent of promissory notes that were signed by the petitioner. The respondent took an inquest in Puerto Rico wherein the respondent swore that it had these markers in its possession. The allegation was false. The respondent did not have possession of the markers and committed a fraud, not only upon the courts of Puerto Rico, but upon the courts of New York and the United States, as well.

(c) The fact that the respondent did not have the markers was first admitted by them in 1975 when it was forced to serve a new supplemental process on Mr. Greenberg. The new complaint no longer alleged a marker from December 1969, but set forth a debt that was allegedly substantiated by a corporate check signed by Mr. Greenberg that was returned for insufficient funds. The implication that the petitioner was holding a dead check was also false and fraudulent. The judgment from the Superior Court of Puerto Rico clearly states that the respondent did not have possession of either a marker or a returned check. The reason for this is very simple. The evidence of the debt was destroyed when the petitioner paid the said debt.

(d) The action was brought in Puerto Rico notwithstanding the fact that the respondent has a very substantial New York presence by way of a business office, a legal representative who does all its collection work in New York, and the frequent presence of the Chairman of the Board, who, in fact, signed affidavits in this matter in New York.

(e) The fraud submitted by the respondent in its allegations concerning possession of markers and checks is so flagrant that it could not be waived by a court of law without the court violating the due process rights of the respondent herein.

(f) The court in Puerto Rico ruled that the petitioner had to pay an additional penalty of $2,500 for his obstinacy. That the court assessed a penalty against petitioner for the mere fact that he properly and successfully defended himself in New York makes it overwhelmingly clear that the Puerto Rican tribunal had an inherent prejudice that taints the entire decision.

(g) The court in Puerto Rico disregarded its own standards enacted by its Legislature which requires that court to make a determination as to whether or not the debt in question was more than a "family man" in Puerto Rico could afford to lose. If the debt was for more than a family man could afford to lose, as is obvious in this case, the court was to modify or completely nullify the debt in question. No mention of the statute was even made by the court in Puerto Rico. *See* Puerto Rican Civil Code, §4774, p. 547.

Furthermore, the Puerto Rican court took the unprecedented step of authorizing supplemental service of the summons and complaint upon the petitioner's attorney in order to ensure, or, more specifically, coerce, the petitioner's appearance in Puerto Rico. This extraordinary action and its unique legal ramifications to the petitioner and counsel were fully discussed in papers prepared for the courts below. Respondent's counsel relentlessly scolded counsel for petitioner for being disrespectful toward the judicial system of Puerto Rico. No disrespect is meant. However, certain considerations are a fact of life which must be faced in disposing of this case. The respondent never addressed the issue as to why the Superior

Court of Puerto Rico would go to such unprecedented and extraordinary lengths to guarantee the petitioner's presence in the Commonwealth. Perhaps the Puerto Rican tribunal wished to exact its vengeance against the petitioner for his "obstinate" conduct in pursuing his petitioner's rights in New York. In any event, when one considers that revenue generated from the gambling tables support the judicial machinery there, it becomes clear that the Puerto Rican courts have an inherent conflict when passing upon cases involving gambling debts.

The facts that are apparent in this matter show fraud, collusion, oppression, prejudice, violations of due process and equal protection of the law. Even if this matter did not involve a gambling debt, but had its foundation in a normal commercial transaction, the judgment should be overturned in the name of equity and due process in light of violations previously discussed.

The actions of the Puerto Rican court clearly resulted in the taking of petitioner's property without due process of law. This act is in violation of the civil rights law as enuciated in 42 U.S.C. §1983. The acts of that court clearly may be enjoined. *See Erdman v. Stevens,* 458 F. 2d (2d Cir. 1972).

In *Terrace v. Thompson,* 263 U.S. 197, 44 S. Ct. 15, 68 L. Ed. 255, the Supreme Court stated:

> ". . . Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the federal constitution wherever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such case a person, who as an officer of the state is clothed with the duty of enforcing its laws and

> who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a federal court of equity."

In *Jackson v. Virginia,* 443 U.S. 307, 61 L. Ed. 2d 560, 99 S. Ct. 2781, which is concededly a criminal matter, the rule is promulgated that if a state conviction is to stand, a federal court must consider whether there is sufficient evidence to justify a rational trier of the facts to find guilt beyond a reasonable doubt so that the defendant's constitutional rights would be protected.

While the due process rights in *Jackson v. Virginia* were protection against unlawful imprisonment, the same principle should apply to the unlawful taking of property by a state court, or, in this case, a Commonwealth in violation of the Fourteenth Amendment to the United States Constitution, to wit: that if the trier of the facts could not have rationally come to its decision, the federal courts may overturn that decision, as an act that improperly takes property from an individual. The principles above stated clearly apply to the facts of the instant matter.

The attack on the judgment in question is in the nature of a due process violation that may properly be heard by a federal court. However, once a matter has been commenced in a state or commonwealth court, the case of *Younger v. Harris,* 401 U.S. 37, expounded upon the "Abstention Doctrine" that requires exhaustion of all state remedies. In other words, appealing the decision of the Puerto Rican court in Puerto Rico did not create a *res judicata* situation. On the contrary, such appeal was required before a federal district court could obtain proper jurisdiction under the "Abstention Doctrine." The rationale simply being that in most cases it should be incumbent upon the

state court to rectify a due process violation in the first instance. The court in Puerto Rico not only did not rectify the due process violation in the first instance, the court in Puerto Rico added to it.

The failure of the courts below to recognize its duty to weigh the alleged constitutional violations occurring in the Puerto Rican courts, separate and apart from a simple full faith and credit and *res judicata* analysis, mandates a reversal of the judgment below.

Accordingly, it is respectfully requested that in view of the foregoing, the instant petition for certiorari be granted in all respects.

II.

THE JUDGMENT RENDERED BY THE COURT OF PUERTO RICO IS NOT ENTITLED TO FULL FAITH AND CREDIT AS THE RENDERING COURT LACKED *IN PERSONAM* JURISDICTION OVER THE PETITIONER.

The action underlying the judgment sued upon in the instant case was commenced by service of process in accordance with Rule 4.7(a) of the Puerto Rican Rules of Civil Procedure. Pursuant to the statute, the courts of Puerto Rico can exercise long-arm *in personam* jurisdiction over a non-resident defendant when such defendant ". . . carries out business transactions within Puerto Rico." The sole basis of the petitioner's liability in the underlying suit was his alleged default in the payment of gambling losses incurred within the Commonwealth. It is respectfully submitted that the petitioner's recreational, non-commercial, gambling activities cannot as a matter of law constitute the "transaction of business" within the contemplation of P.R. R.C.P. 4.7(a)1.

The extent to which federal due process limits state jurisdiction over non-residents is a question of federal law. *Pembleton v. Illinois Commercial Men's Assoc.*, 124 N.E. 355, *cert. dism'd*, 253 U.S. 499. In the leading case of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), the Supreme Court observed that in order to subject a defendant to long-arm *in personam* jurisdiction, the due process clause requires certain minimum contacts within the territory of the forum be shown. Whether due process is satisfied must depend upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it is the purpose of the due process clause to insure. In the absence of minimum contacts between the forum state and the non-resident defendant, the maintenance of a suit based on long-arm jurisdiction offends traditional notions of fair play and substantial justice.

The only case cited by the courts below as authority for the jurisdictional basis of the Puerto Rican courts herein is *San Juan Hotel Corporation v. Lefkowitz*, 277 F. Supp. 28 (1967). Significantly, this decision was rendered by the District Court for Puerto Rico and has never been supported by any appellate authority. The petitioner respectfully submits that insofar as *Lefkowitz* may be read to hold that recreational gambling constitutes the transaction of business for the purpose satisfying the instant long-arm statute, it is constitutionally infirm and must be rejected. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952). Such a holding was, in any event, dicta under the facts of that case as the petitioner therein had executed markers wherein he had consented to the jurisdiction of the courts of Puerto Rico. There were no markers relied upon for consent jurisdiction in the instant case and therefore *Lefkowitz* is inapposite to the factual situation presented herein.

The petitioner submits that equating occasional recreational gambling by a non-resident with the "transaction of business"

offends traditional notions of fair play and substantial justice. The Puerto Rican tribunal based its jurisdiction over petitioner Greenberg pursuant to Rule 4.7(a) of the Puerto Rican Rules of Civil Procedure which states as follows:

> ". . . Where the person to be served is not within Puerto Rico, the General Court of Justice of Puerto Rico shall have personal jurisdiction over said nonresident of Puerto Rico if the action or claim arises as a result of the following: (1) Such person or his agent carries out business transactions within Puerto Rico."

The statutory scheme clearly permits the Puerto Rican court to exercise long-arm jurisdiction over a non-resident petitioner who "transacts business" in the Commonwealth. However, the activities of petitioner Greenberg for which the Puerto Rican court presumed to exercise jurisdiction were exclusively gambling activities, which hardly falls within the meaning of the term "transaction of business."

Interestingly, the Puerto Rican Legislature affirmatively classified gambling, not as business or commercial in nature, but rather as a sport or amusement activity. I respectfully refer this Court to Title Fifteen of the Laws of Puerto Rico Annotated, which contains a section designated as "Sports and Parks." Gambling appears under this heading which includes activities as cock-fighting, target shooting and dog racing. Clearly, the Legislature has determined that gambling's appropriate classification is that of a recreational activity, which is to be distinguished from business or commerce, as used in the aforementioned statutory context.

It should be further noted that in Las Vegas, Nevada, the most prominent gambling haven in the United States, not only

are the gambling casinos denied access to long-arm statutory provisions to enforce their gambling debts but all gambling debts are unenforceable in the courts of that state irrespective of the manner of service employed. *West Indies v. First National Bank of Nevada,* 67 Nev. 13; *Nevada Tax Comm. v. Hicks,* 73 Nev. 115. The "Las Vegas doctrine" takes into consideration that if on impulse a person incurs a gambling debt by borrowing against his homestead or life savings, the gambling operator should not be permitted access to the courts to destroy that person's life. It is respectfully submitted that pursuant to the Las Vegas doctrine, this Court should hold that a gambling casino acts at its own peril when extending credit. As observed earlier, even Puerto Rico has recognized that casinos should be prepared to bear any gambling loss which exceeds that which a good family man can afford. Moreover it is unseemly to allow Puerto Rico to bring back non-resident vacationers to be tried before the very courts that are in part supported by the same revenues that the gambling casinos are attempting to collect.

In the absence of any petition authority or guidance in this area, the petitioner respectfully submits that it was error for the lower court to conclude that it was presumptively bound by the *Lefkowitz* case in finding that jurisdiction was valid in Puerto Rico. As petitioner cannot be said to have "transacted business" in the forum territory, no *in personam* jurisdiction over the petitioner existed by reason of his gambling activities and the sued-upon judgment is not entitled to full faith and credit.

We respectfully request this Court to grant the writ of certiorari, so as to resolve these issues.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LEONARD M. SIMON
Attorney for Petitioner

APPENDIX

ORIGINAL COMPLAINT

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN SECTION

EL SAN JUAN HOTEL CORPORATION

Plaintiff

vs.

BOB GREENBERG

Defendant

CIVIL ACTION
No. 71-1906

COLLECTION OF MONEY

Comes now plaintiff by its undersigned attorneys and complaining of defendant respectfully alleges and prays:

1. Plaintiff is a corporation organized under the laws of the Commonwealth of Puerto Rico, which operates a hotel in Puerto Rico.

2. Defendant is a resident of the State of New York.

3. On or about April, 1970, defendant borrowed from plaintiff at the aforesaid hotel operated by plaintiff the sum of $7,500.00, no part of which has been paid although payment thereof has been duly demanded.

4. Such indebtedness is evidenced by (a) written evidence(s) of indebtedness delivered to plaintiff which contain(s) the following provision:

> "The undersigned consents and submits to the jurisdiction of any court of record in the Commonwealth of Puerto Rico in any action arising out of the obligation evidenced by this instrument and consents to the service of process upon him by mail at the address heretofore given to payee or personally outside the territorial limits of said Commonwealth. In any such action, the undersigned shall be responsible for all costs, and for attorneys fees in the liquidated sum of twenty-five per cent of the obligation sued upon."

WHEREFORE, plaintiff prays that this honorable court grant judgment adjudging defendant liable to plaintiff in the amount of $7,500.00 plus the costs and expenses of this action, plus attorneys fees in the amount of $1,875.00.

San Juan, Puerto Rico, this day of March, 1971.

MAR. 29, 1971

GONZALEZ, Jr., GONZALEZ, OLIVER & MORAN

s/ Eduardo-Colon Castro
EDUARDO-COLON CASTRO
Attorneys for plaintiff
Box 11367
Santurce, Puerto Rico 00910

AMENDED COMPLAINT

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN SECTION

SAN JUAN HOTEL CORPORATION

Plaintiff

vs.

BOB GREENBERG, a/k/a ROBERT GREENBERG, a/k/a BELTRAN IRA GREENBERG

Defendant

CIVIL ACTION NO. 71-1906

COLLECTION OF MONEY

TO THE HONORABLE COURT:

Comes now plaintiff by its undersigned attorney and complaining of defendant respectfully alleges and prays:

1. Plaintiff is a corporation organized under the laws of the Commonwealth of Puerto Rico which operates a hotel in Puerto Rico.

2. Defendant is a resident of the State of New York.

3. On or about November 1969 and January 1970 defendant obtained credit from plaintiff at the aforesaid hotel operated by plaintiff and borrowed an average amount of $11,000.00 of which he paid $3,000.00 leaving a balance pending

of payment of $8,000.00. At a later date, purporting to pay the balance of $8,000.00 owed, defendant issued a check for said amount in the name of a corporation controlled by him, such check was dishonored by the drawee bank, and although the defendant then promised again to pay the debt, he only paid $500.00 and still owes the sum of $7,500.00 no part of which has been paid although payment thereof has been duly demanded.

4. Upon incurring in the debt sued upon defendant consented and agreed to submit to the jurisdiction of the courts of the Commonwealth of Puerto Rico in any action arising for the collection of the same and to pay for all costs and for attorneys fees in the liquidated amount of 25% of the amount claimed in any action. Additionally defendant has been wantonly obstinate and contumacious in his negative to pay the debt claimed, has prolonged and delayed the proceedings for its collection and has caused defendant inconveniences, problems and unnecessary expenses and have falsely stated that he was not served previously with process, for which conduct he should be condemned to the payment of a substantial additional sum for attorneys fees.

WHEREFORE, plaintiff prays that this honorable court grant judgment adjudging defendant liable to plaintiff in the amount of $7,500.00 plus the costs and expenses of this action, plus attorneys fees in the amount of $3,750.00.

San Juan, Puerto Rico, this 4th day of November 1975.

s/ Eduardo Colon Castro
EDUARDO COLON CASTRO
Attorney for Plaintiff
PO Box 8836-Santurce, P.R. 00910

DECISION OF THE SUPERIOR COURT OF PUERTO RICO

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PART

SAN JUAN HOTEL CORPORATION

Plaintiff

vs.

BOB GREENBERG, a/k/a Robert Greenberg, a/k/a Beltran Ira Greenberg

Defendant

CIVIL NO. 71-1906

COLLECTION OF MONEY

HISTORY OF THE ACTION, FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

HISTORY OF THE ACTION:

The original complaint in this action was filed on March 29, 1971. The defendant was served under the provisions of Rule 4.7 of—Civil Procedure of Puerto Rico, he did not answer to the complaint nor in any way appeared on record and after his default was entered the corresponding hearing was held and judgment was entered on May 2, 1972 in favor of plaintiff.

In proceedings in execution of judgment before the courts of the City of New York and the State of New York, where the

defendant resides, as it appears from pleadings filed from 1974 on before this court, the Division of Appeals of the New York Supreme Court (equivalent to the Superior Court of Puerto Rico), after the plaintiff obtained summary judgment, in its favor in two lower courts, it resolved, 360 New York Supp. 2d, 443, that a hearing should be held to determine if the Puerto Rico Court had obtained jurisdiction over the defendant, taking into consideration his pleadings that the registered letter that he received contained a collection notification and not a complaint and a summons.

The plaintiff requested from this Court on a motion dated December 31, 1974 that a hearing be held, and that it require the appearance of the defendant, so that the issues raised by him in New York be litigated in Puerto Rico and that this Court would make a final determination but this Court denied the request by resolution entered on January 21, 1975.

On November 4, 1975 the plaintiff filed a motion notifying that the New York City Civil Court, Kings County, determined, at the hearing that was ordered by the State's Court of Appeals, that Puerto Rico had not obtained jurisdiction on the defendant in the original proceedings. The plaintiff requested that new summons be issued under Rule 4.7, that supplementary summons be authorized and an amended complaint be allowed requesting the payment of the sum of $7,500, the costs and for his obstinacy, the sum of $3,750 for attorney's fees.

The amended complaint was allowed, the defendant was again served under the provisions of Rule 4.7 of----Civil Procedure of Puerto Rico, and after the Court denied a motion of the defendant contesting the jurisdiction of the Court, the defendant answered the complaint on May 19, 1976 denying the pleadings on the debt and raising various affirmative defenses.

Decision

After both parties made use of discovery proceedings, the plaintiff requested on July 7, 1977 the setting of the date for the trial of the case. Instead the Court ordered a pre-trial conference to be held on October 17, 1977. The said conference was not held because the defendant had not as yet retained new counsel in spite of the fact that by order of May 19, 1977 he had been granted a term of twenty (20) days to do so. Even though Attorney Ruperto Robles appeared at the conference, nevertheless, he announced that he had been offered the defense of the defendant but that he had not decided to accept it or not. Attorney Robles was granted ten (10) days to inform the Court if he was going to act as counsel for the defendant and the trial was scheduled to be held on November 29, 1977.

The trial that was scheduled for November 29, had to be continued because the defendant had not notified his new counsel and the plaintiff, in order to give the defendant an opportunity to be represented by an attorney, requested that the trial be postponed. Attorney Robles was given five (5) days to notify the court if he would accept defendant's defense under the warning of declaring the defendant in default.

The trial was again set for March 9, 1978 but the same was not held because an essential witness for the plaintiff had an accident and because the defendant notified that he could not appear, without giving a reason for it.

A new date for the trial that was set for May 16, 1978 was cancelled when the defendant notified his attorney that he was hospitalized in a New York City hospital. At the request of the attorneys of the parties, the Court set up the 26 and 27 of September 1978 as the dates to hold the trial.

Decision

On September 26, 1978 plaintiff's attorney appeared with his evidence and notified the court that he was prepared for the trial of the case. Attorney Ruperto Robles, counsel for the defendant, appeared and informed the Court that he had filed a motion accompanied by a certificate from a Brooklyn, New York physician, stating that the defendant had suffered an attack of abdominal pains and diahrrea on May 13, 1978 and that it was not advisable for him to travel outside of the United States. The attorney for the plaintiff reminded the Court that on a previous trial date the defendant informed through his attorney that he was hospitalized and that he had promised to submit evidence of it, which he never did. The Court, presided by Hon. Judge Doris Figueroa, continued the trial until the following day, September 27 of the current year, to give the defendant a new opportunity to appear at the trial if he was interested in attending.

On the following day, September 27, 1978, the attorney for the plaintiff appeared again with all the evidence prepared for the trial. Attorney Ruperto Robles appeared and notified the Court that he had spoken to the attorney for the defendant in New York who had notified him that the defendant could not appear because his aunt had died. Nevertheless, the attorney for the defendant notified that he was prepared to go into trial. The Court asked the attorney for the defendant that if that meant that even though the defendant was not present he was prepared for the trial, to which the attorney for the defendant replied that he was prepared for the trial without the appearance of his client; after which the trial began.

From the oral and documentary evidence offered by the plaintiff, the documentary evidence offered by both parties and the stipulation agreed upon by the parties, the Court makes the following:

Decision

FINDINGS OF FACT

1. The defendant was lodged at the plaintiff's hotel until January 4, 1970 and when he left the hotel he owed the sum of $11,000 for debts to the Casino. (Exhibit 1 of the plaintiff). Said debt was evidenced by documents for such amount denominated "markers".

2. The defendant made an partial payment of $3,000 on March 9, 1970 and "markers" were returned to him for the same amount, leaving the outstanding debt at $8,000. (Exhibit I of both parties and Exhibit 1 of the plaintiff).

3. On April 1, 1970 the defendant delivered a check for the sum of $8,000 of a Corporation of the defendant and he received from witness Tito Betancourt the remaining "markers" that were the evidence of the balanced owed of $8,000. (Exhibit II of both parties and Exhibit I of the plaintiff).

4. With the delivery of the said $8,000 check the debt of the defendant would have been paid in its entirety to the plaintiff but the aforesaid check, which was issued by Jeff Mar Bus Leasing Corporation, was deposited twice by the plaintiff in his bank and both times the check was returned to the plaintiff due to insufficient funds, the second time with an indication from the bank stating that it should not be deposited again. (Exhibit III of both parties).

5. After the bank did not honor on two occasions the check of Jeff Mar Bus Leasing Corporation, that the defendant gave the plaintiff purporting to pay up the debt, on April 17, 1970 the plaintiff charged back the said amount to the defendant restoring the balance of the account of the defendant to the amount of $8,000. (Exhibit 1 of the plaintiff).

Decision

6. On July 15, 1970, after the balance of the account was re-established to $8,000 due to the previously mentioned returned check, the defendant made an partial payment of $500, thus reducing the balance of the debt to the $7,500 claimed on the complaint (Exhibit I of the plaintiff).

7. By stipulation of the parties it was established that as of July 15, 1970 the debt of the defendant to the plaintiff amounted to $7,500.00 of principal. This was also established by Exhibits 1 and 2 of the plaintiff.

8. The defendant did not make any other payment to his debt after July 15, 1970.

9. It is an established policy by the casinos of the tourism hotels of Puerto Rico to return to the debtors, when they pay by check their debts, the "markers" that they have signed when they incurred in the debt. ("Markers" is a document similar to a check, and that if a blank is filled with the name of a bank it is converted into a check, that the debtor subscribes ordering that the hotel be paid a specified amount and which is utilized at the casinos of the hotels as evidence of the debts incurred by the clients. If the blank is not filled by a bank's name it subsist as evidence of the debt. They are also known in the hotel industry as "UOU's").

10. The check for $8,000 that the defendant gave to the plaintiff on April 1, 1970 (Exhibit II of both parties) and that was returned twice by the bank against which it was drawn, later and during the prosecution of the case, went astray and after plaintiff exhausing all the efforts to locate it was not found. The defendant acknowledged under oath in an affidavit in the record of the execution proceedings in New York City, that said check

issued by Jeff Mar Bus Leasing Corporation was not paid by the bank, that it has not been returned to him and that it should be in possession of the plaintiff.

11. The defendant did not offer any evidence tending to prove that he paid the $7,500 claimed in the complaint.

CONCLUSION OF LAW

1. He that receives money as a loan or any other expendable acquires its property, and is under the obligation to return to the creditor another of the same specie and quality. *Civil Code of Puerto Rico*, Article 1644 (31 L.P.R.A. 4751). The defendant obtained credit and incurred in debts at the casino of the plaintiff's hotel of which he owes $7,500 and is under the obligation to pay to the plaintiff the amount owed.

2. Aside from the credibility and the weight that the Court has given to the testimony of the witnesses, as it is demonstrated by the previous findings of fact, Puerto Rico's Evidence Law provides a presumption that the private transactions were made in a fair and regular way. (32 L.P.R.A. 1887-19) and that the ordinary course of business has been followed. (32 L.P.R.A. 1887-20). The aforesaid law also provides that unless and until a presumption is contested by another evidence we are bound to find according to the presumption.

3. The check for $8,000 that the defendant delivered in exchange of which he received the "markers" that were the evidence of the debt, substituted as evidence of the debt the "markers" returned and up to the amount owed of $7,500 and it constitutes an obligation of the defendant in favor of the plaintiff. It is presumed that an obligation that has not been delivered to the debtor has not been satisfied. Law of Evidence,

32 L.P.R.A. 1887-9. In the record of the case the defendant had admitted under oath that said check was issued to pay his personal debt and that it was not honored by the bank. He accepted that said check was not in his possession and no evidence was presented by the defendant controverting the quoted presumption. Except the $500 installment payment made by the defendant previously, the balance of $7,500 of the amount of the check of Jeff Mar Bus Leasing has not been paid, thus the debt of $7,500 in favor of the plaintiff has not been paid. In addition the testimony of the witnesses believed by the court established that said check----was lost by the plaintiff after being returned twice by the bank without being paid.

4. When the original of a document has been lost evidence of its contents can be presented, proving the fact of the loss, by producing copy of the same or oral evidence of its content. Law of Evidence, 32 L.P.R.A. 1667-1; *Santiago v. Martinez,* 72 D.P.R. 984; *Armstrong v. Jones,* 44 D.P.R. 762. The plaintiff offered evidence of the contents of the lost check by documentary evidence admitted by the Court and it proved the fact of its loss.

5. An entry made by a person or persons who are no longer employed of the proposing party, identified by an official of said party whom did not have knowledge of said transaction and without being shown that the absent person or persons possess said knowledge, it is admissible as evidence and it does not constitute an abuse of discretion by the Court. *Puerto Rico Fertilizer Co. v. Perez,* 35 D.P.R. 46.

The witness needs not to be the custodian of the records at the time they were made. To hold otherwise would fail to recognize the "realities of business" and would exclude a great

amount of reliable evidence concerning the activities of large business organizations. *Bobby Brooks, Inc. v. Hyatt* (1976) 239 NW 2d 782. The records submitted by the plaintiff are reliable and it laid the foundations required by the jurisprudence for its admission as business records maintained during the regular course of business.

6. To any party who has been obstinate the Court shall in its judgment impose the payment of a sum for attorney's fees. *Rule 44.4 (d) of Civil Procedure of Puerto Rico.* The Court also will impose on the party that has been obstinate the payment of legal interests (6%) from the time that the cause of action appeared in every money collection case, to be computed on the amount of the judgment Rule 44.4(e) of Civil Procedure of Puerto Rico. The defendant having proceeded with extreme obstinacy, prolonging this case for more than seven years, the Court is under the obligation to in the just application of the law impose him the payment of attorney's fees commensurate with his acts and to payment of interest from the date in which the cause of action appeared, April 1, 1970.

JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law previously formulated, it is adjudged by the Court that the plaintiff recover of the defendant the amount of $7,500 plus the costs in this proceeding, interests at the legal rate of 6% annually from April 1, 1970, plus the amount of $2,500 for attorney's fees.

Register and Notify.

In San Juan, Puerto Rico, December 18, 1978.

(SIGNED) GUILLERMO ARBONA LAGO
Gillermo Arbona Lago
Superior Judge

CERTIFICATE OF TRANSLATION

I HEREBY CERTIFY: That the foregoing is, to my best of my knowledge and ability, a true and exact translation to the English Language from the Spanish Language of the certified copy of the "HISTORY OF THE ACTION, FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT" attached herewith.

IN WITNESS WHEREOF, I set my hand of this 11 day of June, 1979, at the City of San Juan, Puerto Rico.

s/ Zulma Rodriguez Torres
Translator

Affidavit No. 10,471

Subscribed to before me by Zulma I. Rodriguez Torres, legal age, married and resident of Rio Piedras, Puerto Rico, whom I personally know in San Juan, Puerto Rico, this 11 day of June, 1979.

s/ Roberto de la Torre
Notary Public

ROBERTO DE LA TORRE
ISLA DE PUERTO RICO
ABOGADO NOTARIO

Decision

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPERIOR COURT
SAN JUAN PART

Div. of collection of money, eminent domain, etc.

SAN JUAN HOTEL CORP.

vs.

BOB GREENBERG

CIVIL ACTION NO. 71-1906

COLLECTION OF MONEY

NOTIFICATION

Eduardo Colon Castro, Esq. - P.O. Box 12,242, Santurce, P.R.-00914

Ruperto J. Robles, Esq. - G.P.O. Box 3973, San Juan, P.R.-00936

Gentlemen:

I hereby notify you that in connection with the Memorandum of Costs the Hon. Judge entered the Resolution hereinafter transcribed, which has been entered in the record of the action on this date.

Decision

Resolution:

Approved

(signed) G. Arbona Lago
Superior Judge

May 23, 1979.

San Juan, Puerto Rico, on this 30th day of May, 1979.

Belen Bonit de La Rosa
General Clerk

I HEREBY CERTIFY: That I sent by mail copy of this notification to the above mentioned parties to the addresses indicated in the same, today, May 30, 1979, having entered and filed in the record of this action copy of this notification on the 30th day of May, 1979.

San Juan, Puerto Rico, on the 30th day of May 1979.

(Signed) J.O. Morales
J.O. Morales
Deputy Clerk

CERTIFICATION OF TRANSLATION

I HEREBY CERTIFY: That the foregoing is, to my best of my knowledge and ability, a true and exact translation to the English Language from the Spanish Language of the certified copy of the "NOTIFICATION" attached herewith.

IN WITNESS WHEREOF, I set my hand on this 11 day of June, 1979, at the City of San Juan, Puerto Rico.

s/ Zulma I. Rodriguez Torres
Translator

Affidavit No. 10,473

Subscribed to before me by Zulma I. Rodriguez Torres, legal age, married, and resident of Rio Piedras, Puerto Rico, whom I personally know in San Juan, Puerto Rico, this 11 day of June 1979.

s/ Roberto de la Torre
Notary Public

ROBERTO DE LA TORRE
ISLA DE PUERTO RICO
ABORGADO NOTARIO

OPINION OF HON. HENRY A. BRAMWELL, DISTRICT JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

SAN JUAN HOTEL CORP.,

-versus-

BERTRAM I. GREENBERG.

CROSS MOTION FOR SUMMARY JUDGMENT

Civ. 80-0437

United States Courthouse
Brooklyn, New York

June 6, 1980

Before:

HONORABLE HENRY BRAMWELL,
U.S.D.J.

OFFICIAL COURT REPORTER
ILENE GINSBERG

Appearances:

DANIEL SCHIFFMAN, ESQ.,
For the Plaintiff.

LEONARD M. SIMON, P.C.
For the Defendant.

THE COURT: Is there anything additional you wish to place on the record? The Court has gone over the papers.

MR. SCHIFFMAN: No, your Honor.

MR. SIMON: No, your Honor.

THE COURT: Since the early 1970's, acts engaged in by Bertram Ira Greenberg during a stay in a Puerto Rico hotel and casino have been the source of an endless stream of litigation. Cases evolving from Mr. Greenberg's Puerto Rican escapades have been instituted in state and federal forums, and in both New York and Puerto Rico courts. This action is the latest addition to the cases inspired by Mr. Greenberg.

With this action, the plaintiff San Juan Hotel Corporation asks this court to give full faith and credit to a judgment entered in the Superior Court of Puerto Rico on December 18, 1978. The judgment found Mr. Greenberg liable to the hotel for $7,500 in gambling debts plus attorneys' fees in the amount of $2,500 and interest at the annual rate of 6%. The interest was to run from April 1, 1970. This morning, the hotel has moved for summary judgment in this action.

At an earlier stage of this proceeding, Mr. Greenberg reacted to the hotel's institution of this action by moving, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, to dismiss the hotel's action for lack of subject matter jurisdiction. Before I address the hotel's summary judgment motion, I will assess the validity of Mr. Greenberg's Rule 12(b) motion.

Mr. Greenberg's motion to dismiss is grounded on the contention that this action does not meet the $10,000 amount in controversy requirement necessary to sustain federal court jurisdiction. Essentially, the defendant takes issue with the hotel's inclusion of the interest and attorneys' fees commanded by the judgment in the amount in controversy. Incorporation of said interest and attorneys' fees escalates the amount in controversy to over $14,000.

After a careful review of the relevant case law, including the Eastern District of New York decision in *Richie v. Richie,* 186 F. Supp. 592 (EDNY, 1960) cited by the plaintiff, this Court cannot accept the defendant's argument. This is so because, as noted by Professors Wright and Miller, if the judgment in an action provides for interest, the computation of the amount in controversy in a suit on the judgment includes the interest. Similarly, it is well settled that attorneys' fees are to be considered a component of the amount in controversy calculation. Accordingly, defendant's motion to dismiss is hereby denied.

I turn next to the plaintiff's cross motion for summary judgment. As mandated by the United States Supreme Court in the seminal case of Fauntleroy v. Lum, 210 U.S. 230 (1908) the inquiry for this court with respect to the propriety of the Puerto Rico Judgment at issue in plaintiff's motion must be limited to my determination as to whether the Puerto Rico count had a basis for exercising in personam jurisdiction over Mr. Greenberg, and to whether Mr. Greenberg had notice of the Puerto Rico proceedings.

As to notice, from the material submitted by the hotel in support of this motion, it seems clear that Mr. Greenberg was

served in connection with the Puerto Rico action under the provisions of Rule 4.7 of the Civil Procedure Rules of Puerto Rico. As a result, I find the notice requirement to have been satisfied.

To obtain an in personam jurisdiction basis over Mr. Greenberg, the Puerto Rico court invoked Rule 4.7 of the Puerto Rico Rules of Civil Procedure. Rule 4.7 is a jurisdictional long arm statute substantially similar to New York's CPLR 302. It provides in relevant part:

"Where the person to be served is not within Puerto Rico, the General Court of Justice of Puerto Rico shall have personal jurisdiction over said nonresident as if he were a resident of the Commonwealth of Puerto Rico, if the action or claim arises as a result of the following: (1) Such person or his agent carries out business transactions within Puerto Rico."

In support of the instant motion, the plaintiff argues that Mr. Greenberg's activity at the hotel casino and within the Commonwealth of Puerto Rico in connection with this dispute provides a jurisdictional predicate sufficient to come within the reach of the previously quoted rule. The hotel also asks this Court to observe that the issue of Puerto Rico's in personam jurisdiction over Mr. Greenberg was litigated before, and decided by, the Puerto Rico Court, and that Mr. Greenberg's attorney took an active part in the jurisdiction proceedings.

Mr. Greenberg attacks the plaintiff's arguments on several levels. Initially, he complains that his activities within Puerto Rico did not constitute commercial activities, and as a result cannot be classified as "business transactions," so as to bring them within the Puerto Rico long arm statute.

This claim, however, is laid to rest by the District Court for Puerto Rico's decision in San Juan Hotel Corp. v. Lefkowitz, 277 F. Supp. 28 (DCPR 1967) where the Court, and I quote: "Declined defendant's invitation to emasculate the term 'business transaction' within the state to include only commercial transactions for profit."

In light of this ruling, it is my opinion that Mr. Greenberg's contacts with Puerto Rico in connection with the hotel's claim in this action satisfied the statutory standards for long arm jurisdiction, thereby affording the Puerto Rico Superior Court a jurisdictional basis for the 1978 case involving Mr. Greenberg.

Mr. Greenberg also challenges the Puerto Rico judgment by arguing that it failed to include a finding that the debt involved was not excessive under Puerto Rico law. Moreover, the defendant attacks the sufficiency of the evidence introduced to prove the existence of the debt. In this proceeding, however, the Court need not concern itself with these contentions. This is so because these arguments are best categorized as substantive, and therefore outside the scope of this Court's limited jurisdictional inquiry in this action.

Finally, the defendant maintains that a grant of the present summary judgment motion would be inconsistent with this Court's prior rulings on a similar issue in 79 C 941, Mr. Greenberg's defamation action against the hotel, that also is on this Court's docket. This, however, is not so. When I denied the hotel's counterclaim in 79 C 941 for summary judgment on the enforcement of the December 1978 Puerto Rico judgment, I did not do so on substantive grounds. Rather, I based my decision on the fact that Mr. Greenberg formally had not responded to the hotel's counterclaim.

A comparable situation does not exist in this action. Here, Mr. Greenberg directly has responded to the essential issue raised by the hotel's motion in a lengthy, detailed affidavit authored by his attorney. Since I have found the objections to the hotel's summary judgment motion contained in that affidavit to be meritless, I see no reason to defer my decision to grant the hotel's summary judgment motion.

Therefore, for the foregoing reasons, one, defendant's motion to dismiss is hereby denied; and two, plaintiff's motion for summary judgment is hereby granted.

Settle an order on notice on or before June 18, 1980.

Anything additional?

MR. SCHIFFMAN: No, sir.

MR. SIMON: Yes, your Honor.

I respect the decision, of course. We have our other action pending right now. Is there a way of assigning it to a magistrate and getting an expedited trial?

THE COURT: If both parties stipulate.

MR. SCHIFFMAN: I am not counsel in that case.

MR. SIMON: Would your Honor entertain a motion to stay execution —

THE COURT: Not at this time. You must submit on papers.

MR. SIMON: We have a motion pending with Greenberg as the plaintiff-defendant, and we have not answered pending this decision —

THE COURT: I'm not dealing with that matter at the moment.

MR. SIMON: All right, your Honor.

* * *

OPINION OF THE COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the first day of December one thousand nine hundred and eighty.

Present:

HONORABLE IRVING R. KAUFMAN

HONORABLE WILLIAM H. TIMBERS,
Circuit Judges.

HONORABLE CHARLES L. BRIEANT,
District Judges, sitting by designation.

SAN JUAN HOTEL CORPORATION,

Plaintiff-Appellee,

v.

BERTRAM IRA GREENBERG, a/k/a BOB GREENBERG, a/k/a ROBERT GREENBERG,

Defendant-Appellant.

Opinion of the Court of Appeals for the Second Circuit

Filed Dec. 1, 1980

80-7610

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

1. The Puerto Rican court appropriately exercised jurisdiction over appellant pursuant to Puerto Rican law and the Constitution. *San Juan Hotel Corp. v. Lefkowitz,* 277 F. Supp. 28 (D.P.R. 1967). The judgment of that court is, therefore, deserving of full faith and credit, *Fauntleroy v. Lum,* 210 U.S. 230 (1908), and the district court properly granted summary judgment for appellee, *see* Rule 56(c), Fed. R. Civ. P.

2. Appellee's motion for summary affirmance or to dismiss the appeal as frivolous is denied as moot.

s/ Irving R. Kaufman
IRVING R. KAUFMAN

s/ William H. Timbers
WILLIAM H. TIMBERS,
Circuit Judges.

s/ Charles L. Brieant
CHARLES L. BRIEANT,
District Judge.